> 017121 RESO 2004-25503

## CITY OF MIAMI BEACH COMMISSION ITEM SUMMARY



#### **Condensed Title:**

A Resolution of the Mayor and City Commission of the City of Miami Beach, Florida, after Public Hearing Waiving by 5/7ths Vote, the Prohibition of Tran Construction, Inc. from Serving as a Vendor with the City Pursuant to Miami Beach City Code Section 2-487 (B)(4)); Provided the Aforestated Waiver is Herein Granted, Awarding a Contract to the Lowest and Best Bidder, Tran Construction, Inc., In the Amount of \$1,996,000 for the base bid, add alternate no. 1 and add alternate no. 4, Pursuant to Bid No. 10-03/04 for the ADA and Interior Renovations for the Jackie Gleason Theater of the Performing Arts; and, Provided, In the Event that the Aforestated Waiver is Herein Not Granted, Awarding a Contract to the then Lowest and Best Bidder, Miami Skyline, In the Amount of \$1,975,000 for the Base bid and add alternate no. 1 only.

#### issue:

Should the City Commission exercise its authority to waive by 5/7<sup>th</sup> vote the current prohibition of Tran Construction from serving as a vendor in order to award a contract to the lowest bidder Tran Construction, Inc. for the Base Bid and Alternates 1 and 4 for the ADA and Interior Renovation for the Jackle Gleason Theater of the Performing Arts; or alternatively, decline to exercise its waiver authority and award a contract to Miami Skyline, Inc. for the Base Bid and Alternate 1, which is a scope reduction of \$279,000 from the Tran bid proposal?

#### Item Summary/Recommendation:

The work specified in this bid consists of furnishing all materials, labor, equipment, supervision, mobilization, overhead & profit required to perform the following work:

Renovation of 20 restrooms (add alternate 4 increases the number of restrooms to 26).

Installation of ADA compliant doors, frames, hardware, motorized ADA lifts, and exterior ADA ramp.

Dressing rooms improvements and renovation of main lobby galleries and entranceways

Box Office renovations including: ADA compliant ticket window, new media desk, new brochure rack, new posters displays, new interior storefront doors, and wall & ceiling treatments.

New storefront doors at entrance to Founders Room.

Replacement of existing handrails with new handrails at Lobby & Gallery ramps.

Electrical & lighting improvements.

New plumbing to provide hot water to certain bars & bathroom locations.

Patrons Lounge remodeling including new A/C units, ductwork & associated roofing.

Replacement of restrooms rooftop exhaust fans and associated electrical & roofing work.

The Administration recommends the City Commission consider whether or not to exercise its waiver authority and then award a Contract to either the lowest bidder Tran Construction, Inc., or Miami Skyline. Tran Construction's bid proposal for the Base Bid and Alternates 1 and 4 is \$279,000 lower than the bid received by Miami Skyline. Since present funding is sufficient to only address the combination of Tran Construction's Base Bid w/Alternates 1 & 4, any award to Miami Skyline will include only Alternate 1 and will not include Alternate 4.

#### Advisory Board Recommendation:

The Miami Beach Convention Center Capital Oversight Committee approved the project on April 24, 2001.

## Financial Information:

| Source of   |                |                |                 |
|-------------|----------------|----------------|-----------------|
| unds:       |                | \$89,010       | 441.2253.069358 |
|             |                | \$224,778      | 441.2256.069358 |
|             |                | \$778,352      | 441.2250.069358 |
|             |                | \$228,200      | 441.2400.069358 |
|             |                | \$20,000       | 441.2305.069358 |
|             |                | \$82,883       | 441.2257.069358 |
|             |                | \$200,000      | 441.2352.069358 |
| l.          |                | \$300,000      | 441.2399.069358 |
|             | Flate Straveni | \$72,777       | 441.2351.069358 |
| nance Dept. |                | \$1,996,000.00 |                 |

City Clerk's Office Legislative Tracking:

Gus Lopez, ext. 6641

Sign-Offs:

GL\_\_\_\_TH\_\_\_\_ RCM

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AGENDA ITEM

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DATE 225-04

## CITY OF MIAMI BEACH

CITY HALL 1700 CONVENTION CENTER DRIVE MIAMI BEACH, FLORIDA 33139 www.miamibeachfl.gov



Date: February 25, 2004

#### **COMMISSION MEMORANDUM**

To:

Mayor David Dermer and

Members of the City Commission

From:

Jorge M. Gonzalez

City Manager

Subject:

ARESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, WAIVING BY 5/7THS VOTE, THE PROHIBITION OF TRAN CONSTRUCTION, INC. FROM SERVING AS A VENDOR WITH THE CITY PURSUANT TO MIAMI BEACH CITY CODE SECTION 2-487 (B)(4)); PROVIDED THE AFORESTATED WAIVER IS HEREIN GRANTED, AWARDING A CONTRACT TO THE LOWEST AND BEST BIDDER, TRAN CONSTRUCTION, INC., IN THE AMOUNT OF \$1,996,000 FOR THE BASE BID, ADD ALTERNATE NO. 1 AND ADD ALTERNATE NO. 4, PURSUANT TO BID NO. 10-03/04 FOR THE ADA AND INTERIOR RENOVATIONS FOR THE JACKIE GLEASON THEATER OF THE PERFORMING ARTS; AND, PROVIDED, IN THE EVENT THAT THE AFORESTATED WAIVER IS HEREIN NOT GRANTED, AWARDING A CONTRACT TO THE THEN LOWEST AND BEST BIDDER, MIAMI SKYLINE, IN THE AMOUNT OF \$1,975,000 FOR THE BASE BID AND

ADD ALTERNATE NO. 1 ONLY.

## **ADMINISTRATION RECOMMENDATION**

The Administration recommends that the City Commission consider utilizing specific waiver authority granted under City Code Section 2-487(B)(4) in order to award a construction contract to Tran Construction, Inc. Tran Construction is currently the lowest bidder for the above named project, but is presently ineligible to receive an award of contract unless a waiver pursuant to this section is granted. The Administration is recommending that the Base Bid and Alternates 1 & 4 be awarded. The difference in cost between the lowest bidder and the second lowest bidder for the same Base plus alternate combination is \$279,000. Present funding is insufficient to award this entire combination to the second lowest bidder at this time, but it is anticipated that Alternate 4 may have to be added at a later date. The Administration recommends that an award be made at this meeting in order to meet the tight timelines required to complete the Base Bid portion of the project.

#### **FUNDING**

Funding for construction in the amount of \$1,996,000.00 and additional funds for a 10% contingency and for construction management is available from the Convention Development Tax (CDT) Fund 441.

Total funding in the amount of \$35,000,000 has been appropriated from Fiscal Year (FY) 96/97 through 03/04, for the Convention Center and Jackie Gleason Theater of the

City Commission Memorandum February 25, 2004

Bid No. 10-03/04 For The ADA And Interior Renovations For The Jackie Gleason Theater Of The Performing Arts Page 2 of 9

Performing Arts (TOPA) Capital Projects. Pursuant to the City Commission request for balance updates to be current preliminary figures through February 17, 2004 show \$26,260,560.21disbursed, with an additional \$4,648,604.45 encumbered for projects in progress. It is estimated that the City will need to expend funds from the \$10,000,000 held for the Cultural Arts Council before the end of FY 03/04.

#### **ANALYSIS:**

In 1996, the City retained the Architectural firm of R.J. Heisenbottle Architects, P.A. to conduct a survey of both TOPA and the Convention Center to identify those areas that were not in compliance with the provisions of the Americans with Disabilities Act (ADA), and to prepare an estimate of the costs of the modifications needed to comply with the ADA. As a result of this study, the City budgeted funds to renovate certain of the restrooms at the Miami Beach Convention Center (Convention Center) and the Jackie Gleason Theater of the Performing Arts (TOPA), as well as for the replacement of doors and door hardware to bring both buildings into compliance with the requirements of the ADA.

The City issued an RFQ for the design services to undertake this project. On February 9, 2000, an Agreement was executed between the City and A.R.I. Architects, Inc. (d/b/a: SKLARchitecture, (Consultant)), for professional Architectural and Engineering services to develop plans, specifications and construction documents for the renovation of the Convention Center and TOPA to provide ADA-compliant door hardware and to refurbish a lounge and two lobbies, and certain restrooms in both buildings for a maximum fee of \$283,451.

On March 3, 2003, invitation to Bid No. 27-02/03 was issued for the Jackie Gleason Theater of the Performing Arts (TOPA) ADA and interior renovations, resulting in the receipt of 10 bids.

On April 30, 2003, the Mayor and City Commission awarded a contract to Romano Brothers Construction Inc. (Romano Brothers) as the lowest responsive bidder. On May 7, 2003, Romano Brothers informed the City of its decision not to honor their bid due to an error in their bid pricing. Subsequently, staff analyzed the option of rescinding the contract award to Romano Brothers and awarding a contract to the next lowest responsive bidder. However, staff determined that an award pursuant to this bid, after the April 30, 2003 Commission meeting, would jeopardize the timely Substantial Completion of Phase I of the project.

On May 19, 2003, a bid protest was submitted by the apparent second lowest responsive bidder, Regosa Engineering, Inc. (Regosa).

At the City Commission meeting of June 11, 2003, staff recommended that the City Commission rescind the contract award to Romano Brothers and reject all bids. The

City Commission Memorandum February 25, 2004

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project could then be re-bid for construction during TOPA's next break in scheduled events. The Romano Brothers's award was rescinded, but the City Commission directed staff to negotiate a contract with the apparent second lowest responsive bidder, Regosa, subject to discussions and Regosa's willingness to honor their bid price until mid 2004.

As part of the bid evaluation process, City staff performed a review of Regosa's references for compliance with contract provisions, which required the contractor to have completed projects of a certain size and scope and to have had experience in the type of renovation involved. This evaluation was not undertaken prior to the June 11, 2003 City Commission meeting since a rejection of all bids was recommended and the Administration had no advance indication that the Commission would consider a bid award.

Upon review of the Regosa's completed projects, the City's Consultant, SKLARchitecture, and the City's Program Manager, URS Corporation, and the Administration did not recommend Regosa for failure to demonstrate successful completion of similar projects.

On November 20, 2003, this item was presented at the Finance and Citywide Projects Committee meeting. Committee members concurred with staff's recommendation to reject bids.

At the City Commission meeting of December 10, 2003, the City Commission approved rejection of all bids.

Invitation to Bid No. 10-03/04 was issued for the re-bid of the Jackie Gleason Theater of the Performing Arts ADA and Public Interior Design Enhancement Renovations on December 19, 2004, with an opening date of February 10, 2004. A pre-bid conference and site inspections were held on January 13, 2004, January 15, 2004, and January 29, 2004. BidNet issued bid notices to prospective bidders, resulting in 45 Vendors requesting bid packages, which resulted in the receipt of 4 bids.

The work specified in this bid consists of furnishing all materials, labor, equipment, supervision, mobilization, overhead & profit required to provide but not limited to the following:

- 1. Renovation of 20 restrooms broken down as follows:
  - 5 women & 5 men public restrooms
  - 1 women & 1 men employee restrooms, 1 Unisex restroom
  - 7 Dressing Room restrooms

The restrooms will be reconfigured, re-plumbed as required and be provided with new fixtures and new finishes resulting in improved ADA compliant toilet facilities.

- 2. Removal of existing doors as noted on plan & Replacement of doors, frames & door Hardware, with improved ADA-compliant hardware.
- 3. Replacement of existing Handicap lift with New Motorized ADA lift.

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- 4. Demolition of existing Exterior Ramp and creation of a new exterior ADA Ramp with railings and associated structural work. (Minor landscaping required).
- 5. Lower a ticket window of the box office to be ADA compliant.
- 6. Dressing Rooms & Dressing room bathroom improvements.
- 7. Renovation of Main Lobby Galleries, and entranceways including wall coverings, ceilings, and lighting.
- 8. New and renovated bars:
  - 3 New Bars First Floor
  - 2 Renovated Bars First Floor
  - 1 New Bar Second Floor
- 9. New Concierge Desk.
- New Merchandise Counter.
- 11. Box Office renovations including:
  - a. New media desk.
  - b. New Brochure Rack
  - c. New posters displays.
  - d. Wall & Ceiling treatments.
  - e. New Interior Storefront doors.
- 12. New Storefront doors at entrance to Founders Room.
- Replace existing handrails with new handrails at Lobby & Gallery ramps.
- 14. New decorative Curtains as shown on plans.
- Electrical & lighting improvements.
- New Plumbing to provide hot water to certain Bar & Bathroom locations.
- 17. Patrons Lounge remodeling per plans and repair damaged sub floor & repair mildew drywall or replace.
- 18. New A/C units & ductwork & associated roofing for the Patrons Lounge.
- 19. Replacement of existing restrooms rooftop exhaust fans and associated electrical & roofing work.
- 20. Initial testing of existing exhaust fans and test & balance upon completion of work. All testing to be by a certified & approved Test & Balance company.

The work above includes but is not limited to Demolition, Concrete work, Concrete patching, Masonry, Stucco Steel Doors & Frames, Access Doors, Plumbing, Waterless

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Urinals Toilet fixtures, Bathroom Accessories, European Toilet compartments, Terrazzo Tile, Granite, carpet, Paint, Mirror, Marble work, Gypsum wall board, Metal work, Metal stud framing, Metal ceiling, Acoustical ceiling tile, Decorative Wall Finishes: Duroplex – textured acrylic coating, Metallic Paint, Heating, Ventilation & Air conditioning Ductwork replacement and rerouting, Fire Sprinkler Systems, Electrical Systems, Lighting, Life Safety & Fire Alarm features, Exhaust Fans, Roofing.

This bid is a lump sum bid but in addition there are Add alternates which consists of the following:

Alternate # 1 Add Balcony Extension

Alternate # 2 Add Bar "L".

Alternate # 3 Add Bar "P & Q" \*

Alternate #4 Add Renovation of 6 restrooms and Founders room interior renovations \*

Because of funding concerns and construction schedule, additional scope was removed from base bid resulting in two additional alternates (3 & 4)\* at time of bidding. These were introduced as part of Addendum #3. Because of TOPA's stringent event schedule, the City Commission would have to approve the award of this contract at its February 25 Commission Meeting. If this process is delayed, the City runs the risk in missing the Convention Center event window for construction for this project in 2004.

# WAIVER OF THE PROHIBITION OF TRAN CONSTRUCTION FROM SERVING AS A VENDOR

The lowest bidder is Tran Construction, Inc. However, Tran Construction directly contributed to a candidate who has been elected to the office of Commissioner. Pursuant to Section 2-487(A)(3) of the City Code, a person or entity who directly or indirectly makes a contribution to a candidate who is elected to the office of Mayor or Commissioner shall be disqualified for a period of 12 months following the swearing In of the subject elected official from serving as a vendor with the City.

Tran Construction contributed to a candidate's campaign on October 28, 2003. The candidated who received the campaign contribution was sworn into office on November 18, 2003. Therefore, Tran Construction is disqualified from serving as a vendor until November 18, 2004, *unless* the City Commission waives, after a Public Hearing, by 5/7ths vote, the requirements of Section 2-487(A)(3) for this particular contract award.

#### **BASIS FOR WAIVER**

A basis for a waiver is found in Section 2-487(B)(4), which states that a contract for the provision of goods, equipment or services exists which, if terminated by the City, would be adverse to the best economic interests of the City. Tran's bid for the Base, Add Alternate 1 and 4 totals \$1,996,000. The next low bidder's bid for the Base, Add Alternate 1 and 4 totals \$2,275,000. Should the City Commission not grant the waiver, and award a contract to the second ranked bidder, there are not sufficient funds available

City Commission Memorandum February 25, 2004

Bid No. 10-03/04 For The ADA And Interior Renovations For The Jackie Gleason Theater Of The Performing Arts Page 6 of 9

to complete Add Alternate #4, which is an important component of the project and consists of the following:

- 1. Renovation of 6 restrooms broken down as follows:
  - a. 3 women & 3 men Public Bathrooms. Specifically Bathrooms #1,2,5,7,9.
- 2. Founders room interior renovation including:
  - a. New A/C package unit & associated roofing.
  - b. Demolition of existing Bar.
  - c. Fabrication of new Bar.
  - d. New Ceilings & Lighting.
  - e. Painting, Curtains & other finishes.

Should the City Commission decide to grant a waiver, then there are sufficient funds available to complete Add Alternate #4 with an award to Tran Construction.

Dun and Bradstreet reports and Financial Statements have been secured for Tran Construction, Inc. and this General Contractor comes highly recommended. Tran Construction, Inc. has been in business since 1998 as a General Contractor, and additionally, the references checked for this contractor have shown that they have provided numerous General Commercial Construction projects with an emphasis on interior and restroom renovations.

The following are several references that were secured collaboratively by City's Procurement staff and URS, the City's Program Manager for this project:

#### Mr. Robert Cardenas

Fox Sports/PSNNetwork

Interior Renovations for TV Network totaling \$1.1 million

"Tran's performance and the finishes used in the renovation project for the TV network were confirmed; the finishes used in this project were high-end quality finishes required in Section 05000 for this project. We were very pleased with the quality of the work and the professionalism exhibited by Tran staff. Tran Construction, Inc. provided value engineering to the project and was able to suggest cost saving alternatives, as well as complete the project one week ahead of schedule."

#### 2. Joe Mixon

**United Airlines** 

New Cargo Building Corporate Office totaling \$980,000

"Tran Construction came in within budget, on time and provided no claims. They provided high-end finishes that were part of the scope of the corporate offices such as terrazzo tile, wood cabinetry and other specialized finishes. We are very pleased with the high quality of the work performed. Furthermore, Tran was very responsive to our needs, and would like to work with Tran again."

#### 3. Pablo Cejas

City Commission Memorandum

February 25, 2004

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#### **PLC Investments**

Renovation of 420 Lincoln Road Building totaling \$11 million

"Our project consisted of the renovation of an historic landmark built in 1940. The interior and exterior renovation included marble, terrazzo tile, granite, keystone, high end woodwork including cabinetry, and storefront glass. The building is a mixed use of tenant space and offices with very high end finishes that required attention to detail and historic reference. We are very pleased with the quality of Tran Construction's work and would not hesitate to use Tran again on other projects. Tran delivered the project within the budget and timeframe specified in their contract."

#### 4. Mr. Van Antle

**Broward Performing Arts Center** 

Interior Renovation of the Broward County Performing Arts Center totaling \$524,000 "We are very pleased with the quality of Tran's work as well as their responsiveness, reliability, professionalism and the ability to complete the project on time and within budget. Also, we were very impressed with Tran's ability to work well with the Architect of record regarding changes in the work. The BPAC project consisted of very high end finishes and attention to detail and craftsmanship. Some of the finishes Tran provided include mahogany, cherry wood, rose marble, terrazzo, and keystone. Worth to mention is the quality of the millwork, it was very good."

In the event that this project is not awarded to the lowest bidder, Tran Construction, Inc. The Procurement staff has secured reference checks and Dun and Bradstreet reports for Miami Skyline, Inc., the 2<sup>nd</sup> lowest bidder. The references are as follows:

#### 1. Ms. Liz Calvo

Key Investments, Key Biscayne

Project Cost: \$500,00 +

Residential Construction of Luxury Homes

"Contractor is responsible, professional, knowledgeable and eager to please the client."

#### 2. Mr. Daniel Garivato

G & G Laboratories, Miami, Florida

Project Cost: \$840,000

Complete Interior Remodeling of Offices, Lobby and Interior of Building

"Highly recommend this Contractor, the Contractor performed good quality work,"

### 3. Mr. Ed Bywaters

Benvenuto / Lieberman Residence

Project Cost: \$1,275,000

New Construction of Ocean Front Luxury Home

"We highly recommend Miami Skyline Construction; they met all our budget and milestone schedule submittals"

#### 4. Ms. Malka Rodriguez

Tropical Park Bathroom Renovations, Miami, Florida

City Commission Memorandum

February 25, 2004

Bid No. 10-03/04 For The ADA And Interior Renovations For The Jackie Gleason Theater Of The Performing Arts Page 8 of 9

Project Cost: \$1,900,000

Renovations of Existing Park Restrooms.

"Miami Skyline was highly responsive to our demands and suggestions, we recommend this contractor for any future projects they may undertake."

Upon execution of the contract with Tran Construction, Inc. two (2) Notices to Proceed will be issued. The Contractor shall commence scheduling activities, permit applications and other pre-construction work within five (5) calendar days after the Project Initiation Date, which shall be the same as the date of the first Notice to Proceed.

Time is of the essence throughout this Contract. This project encompasses Two Phases. Phase I shall be substantially completed within 150 calendar days after the 2nd issuance of the Notice to Proceed. Final Completion shall be achieved within 30 calendar days thereafter.

Phase II shall be substantially completed within 90 calendar days after Substantial Completion of Phase I. Final Completion shall be achieved 30 calendar days thereafter.

#### **CONCLUSION:**

Based on the analysis, the Administration recommends that the City Commission consider utilizing specific waiver authority granted under City Code Section 2-487(B)(4) in order to award a construction contract to Tran Construction, Inc. Tran Construction is currently the lowest bidder for the above named project, but is presently ineligible to receive an award of contract unless a waiver pursuant to this section is granted. The Administration is recommending that the Base Bid and Alternates 1 & 4 be awarded. The difference in cost between the lowest bidder and the second lowest bidder for the same Base plus alternate combination is \$279,000. Present funding is insufficient to award this entire combination to the second lowest bidder at this time, but it is anticipated that Alternate 4 may have to be added at a later date. Upon the determination of whether or not to grant the waiver, the lowest and best bidder will be either Tran Construction, Inc. or Miami Skyline, Inc. The Administration recommends that an award be made at this meeting in order to meet the tight timelines required to complete the Base Bid portion of the project.

JMG/RCM/TH/mb
Attachments
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### **BID TABULATION**

# Bid 10-03/04 -- ADA and Interior Renovations for the Jackie Gleason Theater of the Performing Arts

#### **Tabulated Bid Result**

| Company                                | Base Bid    | Add Alt.<br>1 | Add Alt. | <u>Add Alt.</u><br><u>3</u> | Add Alt. 4 | GRAND<br>TOTAL |  |  |  |
|--|-------------|---------------|----------|-----------------------------|------------|----------------|--|--|--|
| Tran<br>Construction,<br>Inc.          | \$1,859,000 | \$12,000      | \$32,000 | \$64,000                    | \$125,000  | \$2,092,000.00 |  |  |  |
| Miami Skyline<br>Construction,<br>Inc. | \$1,950,000 | \$25,000      | \$40,000 | \$90,000                    | \$300,000  | \$2,405,000.00 |  |  |  |
| Cazo<br>Construction,<br>Inc.          | \$2,430,240 | \$35,000      | \$40,000 | \$80,000                    | \$500,000  | \$3,085,240.00 |  |  |  |
| AFCO<br>Construction                   | \$2,713,284 | \$33,630      | \$45,546 | \$76,720                    | \$617,843  | \$3,487,023.00 |  |  |  |

## Award Recommendation: Base Bid plus Add Alt. 1 & 4

| Company                             | Base Bid    | Add Alt. 1 | Add Alt. 4 | GRAND TOTAL    |
|-------------------------------------|-------------|------------|------------|----------------|
| Tran Construction, Inc.             | \$1,859,000 | \$12,000   | \$125,000  | \$1,996,000.00 |
| Miami Skyline<br>Construction, Inc. | \$1,950,000 | \$25,000   | \$300,000  | \$2,275,000.00 |
| Cazo<br>Construction, Inc.          | \$2,430,240 | \$35,000   | \$500,000  | \$2,965,240.00 |
| AFCO Construction                   | \$2,713,284 | \$33,630   | \$617,843  | \$3,364,757.00 |

## CITY OF MIAMI BEACH NOTICE OF A PUBLIC HEARING

NOTICE IS HEREBY given that a public hearing will be held by the Mayor and City Commission of the City of Mlami Beach. Florida, in the Commission Chambers, 3rd floor, City Hall, 1709. Convention Center Drive, Mlami Beach, Florida, on Wednesday, February 25, 2004, at 10:45 a.m. The purpose of the public hearing is for the City Commission to consider waving, by 577 vote, the prohibition of a campaign donor serving as a vendor with the City (per Miami Beach City Code Section 2-487 (B)(4)).

Inquiries may be directed to Procurement Department (305) 873-

INTERESTED PARTIES are invited to appear at this meeting of be represented by an agent, or to express their views in writing addressed to the City Commission, c/o the City Clerk, 1770 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. This meeting may be continued and under such circumstances additional legal notice would not be provided.

Robert E. Parcher, City Clerk City of Mami Beach

Pursuant to Section 286.0105, Fia. Stat., the City hereby advises the public that if a person decides to appeal any decision made by the City Commission with respect to any matter considered at its meeting or the hearing, such person must ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not consent by the City for the introduction or admission of otherwise consent by the City for the introduction or admission of otherwise inadmissible or irrefevant evidence, nor does it authorize challenges appeals not otherwise allowed by law.

To request this material in accessible format, sign language integral information on access for persons with disabilities, and accommodation to review any document or participate in any sponsored proceeding, please contact 305-804-2489 (voice) or 305 7218 (TTY) five days in advance to initiate your request. TTY users also call 711 (Florida Relay Service).

(Ad #0246)

### **R6 - Commission Committee Reports**

Verbal Report Of The Neighborhood/Community Affairs Committee Meeting Of February 17, 2004: 1)
Discussion Regarding Proposed Amendments To The Existing Debarment And Lobbying Ordinances;
2) Discussion Regarding The Transfer Of Beach Patrol From The Parks Department To The Fire Department; 3) Discussion Regarding Potential Enhancements To The Pine Tree Bark Park; And 4)
Discussion Regarding An Ordinance Amending Miami Beach City Code Chapter 2, Article III "Agencies, Boards And Committees," Section 2-22(5) Thereof Establishing Term Limits Of Board And Committee Members, By Providing That Said Term Limits Should Not Include Time Served As A Result Of Having Filled A Vacancy; Providing For Repealer, Severability, Codification, And An Effective Date.

ACTION: Not reached. Lilia Cardillo to place on the March 17, 2004 Consent Agenda.

#### **R7 - Resolutions**

11:05:34 a.m.

R7A

A Resolution Waiving By 5/7ths Vote, The Prohibition Of Tran Construction, Inc. From Serving As A Vendor With The City Pursuant To Miami Beach City Code Section 2-487 (B)(4); Provided The Aforestated Waiver Is Herein Granted, Awarding A Contract To The Lowest And Best Bidder, Tran Construction, Inc., In The Amount Of \$1,996,000 For The Base Bid, Add Alternate No. 1 And Add Alternate No. 4, Pursuant To Bid No. 10-03/04 For The ADA And Interior Renovations For The Jackie Gleason Theater Of The Performing Arts; And, Provided, In The Event That The Aforestated Waiver Is Herein Not Granted, Awarding A Contract To The Then Lowest And Best Bidder, Miami Skyline, In The Amount Of \$1,975,000 For The Base Bid And Add Alternate No. 1 Only. 10:45 a.m. Public Hearing.

(Capital Improvement Projects)

**ACTION**: Public Hearing held. **Resolution No. 2004-25503 adopted as amended.** Motion made by Commissioner Steinberg to award the base bid and Alternate #1 to the number 2 bidder Miami Skyline, Inc., and direct the Administration to negotiate Alternate #4 with Miami Skyline or utilize the City's Job Order Contracting (JOC) program; seconded by Commissioner Gross; Voice vote: 6-0; Abstained: Commissioner Cruz. Tim Hemstreet to handle.

#### Amendment:

Award the base bid and Alternate #1 to the number 2 bidder Miami Skyline, Inc., and direct the Administration to negotiate Alternate #4 with Miami Skyline or utilize the City's Job Order Contracting (JOC) program.

Jorge Gonzalez, City Manager, introduced the item and stated that the Administration's recommendation is that if the City Commission has the ability to waive the requirements of the ordinance then the Commission should do so and go with the lowest bid. If it can't be waived, because of the timing due to the schedule at the Gleason, the Administration's recommendation is to award to the lowest bidder, forgo alternate #4 and direct the Administration to negotiate at a later date or try to get it as a change order.

Commissioner Cruz recused himself since this group contributed to his election campaign.

Murray Dubbin, City Attorney, stated that the lowest bidder made a campaign contribution to a candidate that won the election. The applicable portion of the vendor campaign contribution ordinance Sec. 2-487(3), disqualifies, for a period of 12 months after the candidate is sworn in,

someone from becoming a vendor. The ordinance is flawed because there is language in the ordinance if you construe it literally, it has no meaning. The provision may be waived under four circumstances under Sub Section B, titled "conditions for waiver of prohibition." He explained that the first three conditions have no application to the present circumstance. The condition, which if applicable, would authorize this Commission to waive the contribution situation, is condition #4. This condition authorizes the Commission to waive the conflict (by a 5/7 vote) "a contract for the provision of goods, equipment or services exist which, if terminated by the City would be adverse to the best economic interest of the City." Thus, the City Commission has the authority to waive termination of a contract that exists in violation of the City Code. The problem with that language is that there is nothing in the Code that authorizes the City Commission to terminate an existing contract. He explained that Sub Section C, provides that "This section shall be applicable only to prospective transactions, and the City Commission may in no case ratify a transaction entered into in violation of this section." The contract that we are talking about is a prospective contract. He stated considering the ordinance as a whole, that in his opinion, the City Commission has the authority to waive the applicability apparent conflict.

Mayor Dermer stated that based on the City Attorney's legal opinion, the City Commission has a right to take a 5/7 waiver vote and a political decision needs to be made to see if the City Commission wants to do it.

Murray Dubbin, City Attorney, added that the entity under the law which has the final authority to interpret ordinances is the entity which created the ordinances which is the City Commission. The City Commission may make its own decision based on the recommendation of the City Attorney, and has made the recommendation, but the City Commission does not have to follow that recommendation. He stated that the introducer of the ordinance disagrees with his interpretation.

Vice-Mayor Smith stated that he was the proponent of this ordinance and has insight as to the intent and the meaning of the language. He explained that one of the first things learned in law school is the principal of "statutory construction; that is what is the plain meaning of the ordinance. He added that the rule is that when the plain meaning of legislation is in front of you, you apply the plain meaning of what the ordinance or statute says, and only if you have an ambiguity in the legislation you go into legislative intent, which is what the body meant when they passed the ordinance. He stated that the language of this ordinance is very clear and clarified that this company is already an existing vendor of the City and should have known better. He explained that the RFP had a prominent statement regarding this particular prohibition. A mechanism was created by which the City Commission could waive this requirement in very narrow and specific circumstances and provision #4, which the City Attorney mentioned, states very clearly that it authorizes the Commission to waive by a 5/7 vote a contract for the provision of goods, equipment or services that exist, which if terminated by the City will be adverse to the best economic interest of the City. He emphasized that no contract presently exists; therefore, this narrow exception does not apply to this particular circumstance. He agreed that this ordinance does not authorize the City to terminate an existing contract, but that others such as the Debarment Ordinance gives the City the authority to terminate a contract in the event the vendor violates any of the laws. He stated that in his opinion and after considering all the facts mentioned he will argue against granting the waiver even if the City has the authority. It is important to send the message that our City ordinances have to be followed. He requested the Commission to authorize the Administration to negotiate with the second bidder and try to have the bids reduced, so these important improvements to TOPA can be implemented as soon as possible.

Commissioner Steinberg agreed with Vice-Mayor Smith stating that he has the same concerns and wholeheartedly supports it.

Commissioner Garcia stated that the City Commission needs to enforce the ordinance and suggested rejecting all the bids and starting all over again.

Jorge Gonzalez, City Manager, stated that the difference in price between the two bidders is about \$280,000. The issue is that there is a time constraint, since this project needs to be completed between performances at the Jackie Gleason.

Commissioner Gross commended Vice-Mayor Smith on his eloquent presentation. He stated that this is a great message to send to the vendors that if they want to do business with the City, they should not contribute to any campaign or they will not be able to do business with the City for 12 months. He stated that for this reason alone it would be a great message to send and he supports that decision. He requested clarification on the difference on the bids from the first time to the second time.

Jorge Gonzalez, City Manager, stated that the base bid came in slightly lower consistently among the bidders who bid both times. That may be because the second bid moved some of the base bid requirements to add/alternates. The first bid, lowest bid was \$1.583 million. The lower bidder now is \$1.996 or a difference of about \$400,000.

Commissioner Gross stated that add/alternate 4 appears to be substantially impacting the price. He suggested taking the base bid and not the add/alternate 4 and look for someone else to do add/alternate 4.

Kevin Taylor, Attorney for Tran Construction Inc., spoke.

Mayor Dermer stated that he agrees with Vice-Mayor Smith's interpretation of the ordinance, and he believes logic dictates that Tran Construction Inc. did not want to be in this position. He stated that there was no intention here, it was just a mistake. He added that if the City interprets this ordinance as allowing the City to issue a waiver, we are basically gutting a very important ordinance to the City because there will be a precedent that will allow that for the future. He believes this is a good ordinance and commended Vice-Mayor Smith for introducing it.

Maria Dono, Vice-President of Operation of Miami Skyline Inc., spoke.

Mayor Dermer asked for a motion to conduct a waiver hearing; since there is no motion, it dies. It is clear that there should not be a wavier provision in this instance.

Jorge Gonzalez, City Manager, recommended that the contract be awarded to the now lowest bidder Miami Skyline Inc; base bid and alternate #1, and direct the Administration to negotiate Alternate #4 with Miami Skyline or utilize the City's Job Order Contracting (JOC) program.

#### Handout or Reference Materials:

- 1. Notice of Ad in The Miami Herald
- 2. Form 8B filed by Commissioner Cruz